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No. 00-492

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

STATE OF ALABAMA,
Petitioner,

v.

MICHAEL HERMAN BOZEMAN,
Respondent.

On Writ of Certiorari to the Supreme Court of Alabama

BRIEF FOR RESPONDENT

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QUESTION PRESENTED FOR REVIEW

Whether the unambiguous, mandatory language of the Interstate Agreement on Detainers was correctly interpreted by the Supreme Court of Alabama?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF CITED AUTHORITIES	vi
Cases	vi
Constitutions, Statutes, and Rules	ix
Other Authorities	ix
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	9
ARGUMENT	9
I. The IAD Is Not Like Other Interstate Compacts	9
A. The Decision Of The Alabama Supreme Court In Ex parte Bozeman Was Consistent With Alabama Precedent.	11
B. Other States Have Interpreted The IAD In A Similar Manner.	14
II. The Plain Language Of The IAD Is Susceptible Of But One Conclusion.	16
A. The Canons Of Statutory Construction Demand A Literal Interpretation Of The Mandatory Language Used In The IAD.	16
B. The Legislative History Of The IAD Does Not Contradict The Plain Language Used In The Statute.	19
C. Only By Affirming The Significance Of The Plain Language Of The IAD Can The Purposes Of The IAD Be Achieved.	22

TABLE OF CONTENTS—Continued

Page

III. Harmless Error Does Not Apply To The IAD. .. 31

A. Unlike The Other Situations Cited In Petitioner's Harmless Error Argument, The Sanction For Violation Of The IAD Is Included In The Clear Language Of The Statute. 31

B. The Petitioner Attempts to Reverse The Burden Of Proof..... 32

C. Imposition Of A Purported Harmless Error Rule As Proposed By the Petitioner Would Vitiate The Unambiguous Language Of The IAD. 33

IV. The "Bright Line" Set Forth In The Statute Is Preferable To A Balancing Test..... 34

A. The Balancing Test Requested By The *Amicus* Is A Chimera. 35

B. No Balancing Test Could Be Imposed Upon The IAD Without Doing Violence To The Clear And Unambiguous Language Of The Statute..... 35

C. The Bright Line Test Already Contained In The Statute Conserves Judicial Resources And Protects The Interests Of All Parties Intended To Benefit From The IAD..... 36

V. The Respondent Made No Waiver Of His Rights Under The IAD And The *Amicus*' Attempt To Find Waiver Fails. 38

TABLE OF CONTENTS—Continued

Page

VI. Imposition Of A "De minimis" Rule Upon The IAD As Proposed By The *Amicus* Would Ignore The Clear Directive Of The Legislative Bodies That Have Adopted The IAD..... 40

A. A "De minimis" Interpretation Would Cloud The Bright Line Established By The Clear Language Of The Statute..... 43

B. Adopting A "De minimis" Rule Would Ignore The Fact That The Harm To The Prisoner Has Already Been Done When The Shuttling Occurs. 45

VII. The Petitioner And The *Amici* Simply Do Not Like The Result In The Present Case, But They Offer No Convincing Arguments That Should Cause This Court To Ignore The Unequivocal Language Of The Statute..... 46

CONCLUSION 47

TABLE OF CITED AUTHORITIES

CASES: Page

Aaron v. SEC, 446 U.S. 680 (1980) 21
Aetna Ins. Co. v. Kennedy, 301 U.S. 389 (1937) ... 39
Alabama v. Bozeman, 121 S. Ct. 654 (2000) 9
Anderson v. Yungkau, 329 U.S. 481 (1947) 17
Barker v. Wingo, 407 U.S. 514 (1972) 43
Caminetti v. United States, 242 U.S. 470 (1917) ... 46
Camp v. United States, 587 F.2d 397 (8th Cir. 1978) 45
Carchman v. Nash, 473 U.S. 716 (1985) 9, 10
Carnley v. Cochran, 369 U.S. 506 (1962) 39
Celotex Corporation v. Catrett, 477 U.S. 317 (1986) 33
Commonwealth v. Fisher, 451 Pa. 102, 301 A.2d 605 (1973) 27, 32
Connecticut National Bank v. Germain, 503 U.S. 249 (1992) 46
Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980). 17
Cooper v. Lockhart, 489 F.2d 308 (8th Cir. 1973) 30
Cuyler v. Adams, 449 U.S. 433 (1981) 9, 19
Ernst & Ernst v. Hochefelder, 425 U.S. 185 (1976) 21
Escoe v. Zerbst, 295 U.S. 490 (1935) 17
Ex parte Bozeman, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000) 8, 9, 13
Fex v. Michigan, 507 U.S. 43 (1993) 46
Gillard v. State, 486 So. 2d 1323 (Ala. Crim. App. 1986) 12, 13, 43
Haywood v. State, 501 So. 2d 515 (Ala. Crim. App. 1986) 12
Henderson v. United States, 517 U.S. 654 (1996) 18

TABLE OF CITED AUTHORITIES—Continued

	Page
Hughes v. Dist. Ct., 197 Colo. 396, 593 P.2d 702 (1979)	31, 37
In re Blake, 99 Cal. App. 3d 1004, 160 Cal Rptr. 781 (1979)	23
Johnson v. Zerbst, 304 U.S. 458 (1938)	39
Longshore v. City of Homewood, 171 So. 2d 453 (1965)	33
Lopez v. Davis, 121 S. Ct. 714 (2001)	17
Mapp v. Ohio, 367 U.S. 643 (1961)	44
Market Company v. Hoffman, 101 U.S. 112 (1879)	17
McCallum v. State, 407 So. 2d 865 (Ala. Crim. App. 1981).	11, 12
Nash v. Jeffes, 739 F.2d 878 (3d Cir. 1984)	30
Nelms v. State, 532 S.W.2d 923 (Tenn. 1976)	23, 27
New York v. Hill, 528 U.S. 110 (2000)	10, 38, 39
People v. Browning, 306 N.W.2d 326 (Mich. App. 1981)	14, 40
People v. Christensen, 102 Ill. 2d 321, 465 N.E.2d 93 (1984)	15, 45
People v. Esposito, 37 Misc. 2d. 386, 201 N.Y.S.2d 83 (Queens County Ct. 1960)	15, 20, 34
People v. Lincoln, 42 Colo. App. 512, 601 P.2d 641 (1979)	28
People v. Reyes, 159 Cal. Rptr. 572 (Cal. Ct. App. 1979)	14
Pittman v. State, 301 A.2d 509 (Del. 1973)	32, 37
Reed v. Farley, 512 U.S. 339 (1994)	10, 42
Rodriguez v. United States, 480 U.S. 522 (1987)	21
Roe v. Alabama, 43 F.3d 574 (11th Cir. 1995)	33
Schiavone v. Fortune, 477 U.S. 21 (1986)	17, 18
Seymore v. State, 429 So. 2d 1188 (Ala. Crim. App. 1983)	12
St. John v. State, 473 So. 2d 658 (Ala. Crim. App. 1985)	12

TABLE OF CITED AUTHORITIES—Continued

	Page
State v. Calderon, 661 P.2d 781 (Kan. 1983)	11
State v. Chirra, 79 N.J. Super. 270, 191 A.2d 308 (N.J. Super. Ct. Law Div. 1963)	20
State v. Harberts, 331 Or. 72, 11 P.3d 641 (2000)	43
State v. Hill, 638 So. 2d 1376 (Ala. Crim. App. 1993)	13, 43
State v. Lippolis, 107 N.J. Super. 137, 257 A.2d 705 (1969)	23, 31, 35
State v. Mason, 90 N.J. Super. 464, 218 A.2d 158 (N.J. Super. Ct. App. Div. 1966)	20
State v. Sassoon, 242 S.E.2d 121 (Ga. 1978)	38
State v. Sephus, 32 S.W.3d 369 (Tex. App. 2000)	16, 24
State v. West, 79 N.J. Super. 270, 191 A.2d 758 (N.J. Super. Ct. App. Div. 1963)	20, 27
Sturgis v. Crowninshield, 17 U.S. 122 (1819)	36
Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)	46
Turner v. State, 584 So. 2d 925 (Ala. Crim. App. 1991)	11
United States ex rel. Esola v. Groomes, 520 F.2d 830 (3d Cir. 1975)	*passim*
United States v. Olano, 507 U.S. 725 (1993)	33, 39
United States v. Rodriguez, 794 F.2d 24 (2d Cir. 1986)	21
United States v. Sorrell, 413 F. Supp. 138 (E.D. Pa. 1976)	23
United States v. Taylor, 487 U.S. 326 (1988)	19
Webb v. Keohane, 804 F.2d 413 (7th Cir. 1986)	39
Whitley v. State, 392 So. 2d 1220 (Ala. Crim. App. 1980)	11
Wright v. Universal Maritime Service Corporation, 525 U.S. 70 (1998)	23, 39

TABLE OF CITED AUTHORITIES—Continued

CONSTITUTIONS, STATUTES, AND RULES: Page

18 U.S.C. App. 2, § 9 (Federal Amendment to IAD) 19, 20, 29, 40
18 U.S.C. § 3162 (Speedy Trial Act) 18
Code of Alabama, 1975, § 15-9-81 (*see also* IAD) 4
Comprehensive Crime Control Act of 1984 (CCCA) 20, 21
Federal Rule of Civil Procedure 15 ..... 17, 18
Federal Rule of Civil Procedure 56 33
Federal Rule of Criminal Procedure 52 33
IAD, art. I 22, 31, 37
IAD, art. III ..... *passim*
IAD, art. IV ..... *passim*
IAD, art. V ..... *passim*
IAD, art. VI 26
IAD, art. VII 42
IAD, art. VIII 10, 11
IAD, art. IX 11, 22, 42
U.S. Const. Amend. VI 43
U.S. Const., art. I, § 10, cl. 3 9
Uniform Mandatory Disposition of Detainers Act (UMDDA) (*see also* IAD) 4

OTHER AUTHORITIES:

Abramson, "The Interstate Agreement of Detainers: Narrowing Its Availability and Applications, 21 *New Eng. J. on Crim. & Civ. Confinement* 1 (1995) 11
Brief for the State of Alabama, the Attorney General of Alabama, and the Secretary of State of Alabama as *Amici Curiae*, supporting Reversal in Case No. 00-836, *George W. Bush v. Palm Beach County Canvassing Board* 33

TABLE OF CITED AUTHORITIES—Continued

Page

Council of State Governments, Suggested State Legislation Program for 1957 (photo. Reprint 1972) (1956) 19, 30

U.S. Department of Justice, Federal Bureau of Prisons, Receiving and Discharge Manual (1997) 30

STATEMENT OF THE CASE

Respondent, Michael Herman Bozeman, was arrested by Covington County, Alabama sheriff's deputies on June 15, 1995 in Opp, Alabama on the federal charge of intimidating a witness. (App. 55.) The shooting incidents that were the basis for the charges in the present case had occurred the night before. There is some dispute about whether the federal charges were connected to the shooting incidents.[1] However, there is no dispute that the investigation of the shooting incidents was done by the Opp Police Department and that *no further investigation was done after June of 1995*. (App. 61-62.) It is also undisputed that Bozeman had been in federal custody since June 16, 1995 and was serving a federal sentence at all times relevant to the issue in this case. (App. 70-71.)

Bozeman pled guilty to federal drug charges and was sentenced in federal court, the United States Court for the Middle District of Alabama, on November 3, 1995 in Case No. 95-140-N. (App. 71, 106-107.) The federal pre-sentencing report shows that the shooting charges with which Bozeman was charged in the present case were still pending at the time of his federal sentencing. (App. 108.) Bozeman was not indicted on the shooting charges until September of 1996. (App. 4-7.)

In the meantime, Bozeman was indicted for possession of a controlled substance in Covington County Case CC-95-350 in September of 1995. (App. 62-63.) On November 8, 1995, Bozeman was transferred to the custody of the Sheriff of Covington County, Alabama, was appointed counsel, was

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[1] Bozeman testified that the federal intimidating a witness charges were based on the shooting incidents. (App. 73-74.) The District Attorney testified that she knew of no connection between them. (App. 60.) The report of Bozeman's federal presentence investigation seems to connect the two. (App. 108.)

arraigned, and was then returned to federal custody without having been tried on the pending shooting charges. (App. 71.) The State drug possession charges in CC-95-350 were dismissed on June 4, 1996 on motion of the State. (App. 22, 66.)

Following the indictment on the shooting charges, Covington County placed a detainer on Bozeman by sending a letter dated October 10, 1996 to federal prison authorities in Atlanta, Georgia. (App. 64, 100-102.) The same letter that requested that a detainer be placed on Bozeman also requested that Bozeman be transferred to Covington County. (App. 101.) However, Bozeman had been moved from the federal penitentiary in Atlanta to the federal penitentiary in Marianna, Florida, and the Covington County District Attorney's office sent a second letter dated January 8, 1997 requesting that Bozeman be transferred to Covington County. (App. 64-65, 98-100.)

After the District Attorney's office had completed the proper forms, Bozeman was brought from the federal penitentiary to Covington County in the custody of the Sheriff of Covington County on January 23, 1997. (App. 56, 65-66, 86-87.) On January 24, 1997, counsel was appointed for Bozeman and he was arraigned on the shooting charges. (App. 17, 28-31.) Since Bozeman's counsel had been appointed only moments before the arraignment, he requested and was granted leave to raise any issues that would normally be addressed prior to arraignment.

> **MR. CHRISTENSEN:** I would also like, if possible, to—it appears that there may be some question about whether the Interstate Agreement on Detainers was properly followed and I need to do some checking on that. What would we would like to . . . .
>
> . . . .

> **THE COURT:** . . . . Well, the record will show that Mr. Christensen here was appointed this morning and the Court understands that he may not have had an adequate opportunity to look into your case thoroughly before being asked to face arraignment. So I am going to proceed with the arraignment, but grant leave on the record to Mr. Christensen to file after arraignment any motions or raise any matters that he might otherwise normally look into and file prior to arraignment.

(App. 27, 28.) Subsequent to the arraignment, Bozeman was again transferred back to the custody of the federal government. (App. 56-57, 67, 87.) At no point did Bozeman ever request to be transferred back to federal custody after having been brought to Covington County. (App. 74.) Nor is there any evidence that he knew that such a transfer was contemplated.[2]

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[2] In fact, Bozeman did not know of the plan to transfer him back, and the transfer took both Bozeman and his newly appointed counsel by surprise. The Petitioner and the *Amici* suggest that one ought to object to something that one does not know is about to happen. Brief for Petitioner at 33-34; Brief of the United States as *Amicus Curiae* Supporting Petitioner at 6; Brief of the National Association of Extradition Officials as *Amicus Curiae* in Support of the State of Alabama at 18.

It is rather presumptuous for one who was not present to claim that "those involved understood that Bozeman was to be returned to Florida after the arraignment." Brief of the National Association of Extradition Officials as *Amicus Curiae* in Support of the State of Alabama at 18. Moreover, it is a false claim. The arraignment took place in the judge's chambers at the Covington County Courthouse (App. 113), and the judge's comment about filling out some forms "before you leave" referred either to leaving the judge's chambers or to leaving the courthouse to return to the Covington County Jail approximately two miles away. (Bozeman did fill out the forms before leaving the courthouse; Sandra S. Sansom, the notary before whom Bozeman swore on January 24, 1997 to the truth of his indigency affidavit (App. 16.), works at the Covington County Courthouse as the judicial assistant to one of the circuit court judges.) On the related point, Bozeman's counsel did have Bozeman's

Following the post-arraignment transfer in the present case, Bozeman's counsel filed a Motion to Dismiss claiming that his transfer prior to trial violated the Interstate Agreement on Detainers (IAD).[3] (App. 32-33.) Bozeman had previously filed a *pro se* motion claiming that his transfer in November of 1995 had violated the IAD. The *pro se* motion had been mailed before Bozeman left the federal penitentiary, and ironically, it arrived and was stamped filed on January 24, 1997, the same day as Bozeman's arraignment.[4] (App. 18-20.) Bozeman's counsel subsequently filed a memorandum brief that also raised the issue that the transfer to Covington

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address; it was 290 Hillcrest Drive, Andalusia, AL 36420, the address of the Covington County Jail, the same address shared by numerous clients of Bozeman's counsel.

Neither the judge nor the district attorney made any mention at the arraignment of the impending transfer which might have alerted Bozeman or his counsel. The forms that indicated that Bozeman would be returned to the federal penitentiary following arraignment were not provided to Bozeman until long after the transfer. Some of the documents showing this (the ones that made it into the record on appeal) were produced in response to Bozeman's discovery requests for the hearing on his motion to dismiss. (App. 43-44, 51-52.) Other documents that Bozeman's counsel obtained from the Federal Penitentiary in Marianna, Florida (the penitentiary did not provide copies until long after the record on appeal had already been completed, although the documents were requested from the penitentiary on March 3, 1997 after the District Attorney's Office initially failed to cooperate with Bozeman's discovery requests) confirm what is shown by the forms in the record: Bozeman had no notice that he was going to be transferred back to the federal penitentiary before trial.

[3] The Interstate Agreement on Detainers (IAD) is also known as the Uniform Mandatory Disposition of Detainers Act (UMDDA). The Agreement is codified in Code of Alabama, 1975, § 15-9-81. Unless otherwise specified, the version of the IAD codified in the Code of Alabama has been used in preparing this brief.

[4] The certificate of service on the *pro se* motion states that it was mailed to the Clerk of the Circuit Court for Covington County, Alabama on January 20, 1997 and that there was an "[a]dditional copy for State Prosecutor." (App. 20.)

County in November of 1995 while the shooting charges were pending (although there was no indictment) also violated the IAD. (App. 37-42.) The memorandum brief also made it clear that Bozeman claimed a violation based on Article IV of the IAD "because the State filed a detainer and obtained custody of the Defendant." (App. 42.)

The trial court deferred consideration of the IAD issue until after trial.

> **THE COURT:** . . . . Mr. Bozeman has filed certain motions seeking dismissal of this action based on the Interstate Agreement on Detainers Act.
>
> I first knew of those motions this week, and this is my jury week, and I simply have not had an opportunity to have a hearing and deal with the motion at this point. And I have decided to handle the matter in this fashion: I am going to deny the motions related to the Interstate Agreement on Detainers Act out of hand, without a hearing, so that he can proceed with the trial today.
>
> However, the defendant, is not waiving his right to address that issue and he is not waiving the right to put on testimony about it and I am reserving to him his right to put on testimony about it and I am reserving to him his right to raise the issue by way of post-trial motion. And I will give the matter detailed consideration by way of post-trial motion.
>
> . . . .
>
> . . . . It is not my intention to cause you to waive anything by my proceeding today.

(App. 46-47.)

The case proceeded to trial, and the jury returned guilty verdicts on all five counts. (App. 114-115.)

Following the trial the following exchange took place.

> **THE COURT:** . . . . And at this time, Mr. Bozeman, you are remanded to the custody of the sheriff.
>
> **MS. LOGGINS:** Your Honor, we need to be sure that he is not sent back to Florida until this over.
>
> **MR. CHRISTENSEN:** I believe that issue is [moot], Your Honor. They have already done what is—.
>
> **MS. LOGGINS:** I think it is waived, but unless he wants to go back I think we need to make an effort that he remain.
>
> **MR. CHRISTENSEN:** I think the district attorney is conceding my point.
>
> **MS. LOGGINS:** I think Mr. Bozeman has waived his complaints.
>
> **MR. CHRISTENSEN:** He absolutely has not.
>
> **THE COURT:** Whatever has happened heretofore has happened heretofore, and whatever happens in the future you are going to have [to] house Mr. Bozeman until I can deal with these issues.

(App. 48-49.)

The Court scheduled a hearing on the IAD issues which was held on March 12, 1997. (App. 53.) Testimony from the District Attorney was taken at the hearing which established that Covington County had placed a detainer on Bozeman and had requested (and obtained) temporary custody of him from the federal authorities on three occasions. (App. 62-68.) Bozeman's counsel questioned the District Attorney regarding the sequence of events.

> Q So basically if I just run through the time line and I am just going to ask you whether you agree that this is accurate. Mr. Bozeman was arrested June 15,

1995; he came under federal custody at some point thereafter?

A Yes, he was arrested on federal charges in June of '95.

Q He was transferred back to Covington County, November 8, '95; and then returned to federal custody?

A Yes.

THE COURT: November 8, '95?

THE WITNESS: Yes.

Q A detainer was placed on him in October of '96 by Covington County?

A Yes, but it was on a different charge.

Q A different charge?

A Yes.

THE COURT: October of '96?

WITNESS: October of '96.

Q He was transferred back to Covington County January 23, '97?

A Twenty-fourth I think, but he might have been brought back on the 23rd. He was here on the 24th.

Q And then returned to federal custody?

A Yes.

Q And then he was brought back in February of 1997?

A Yes.

Q And remains here and present here in court today?

A Yes, he does.

Q Remains in the temporary custody of Covington County?

A Yes.

Q But he is a federal inmate. You have just temporary custody of him from the federal authorities?

A That's correct.

(App. 66-68.) Documents related to the detainer and the transfers were also introduced into evidence at the hearing. (App. 85-108.)

The trial court finally denied Bozeman's motion to dismiss on May 16, 1997. (Pet. App. 27-29.) The trial court limited its inquiry "to whether or not there has been an Article IV violation mandating dismissal of this case." (Pet. App. 27.) In a finding of fact, the court noted "that the defendant was transported from federal authorities to Covington County, Alabama, twice before trial." (Pet. App.27) The court stated that "It made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed." (Pet. App. 27.) In so doing, the court declined to apply Article IV(e) as written. (Pet. App. 29.)

Bozeman moved for a new trial, claiming that the violation of the IAD had hampered his ability to communicate with his counsel in preparation for trial (Bozeman had been transferred back to the federal penitentiary within hours of his counsel having been appointed to him, and he did not return to Covington County until the day before his trial). (App. 56-58, 111-112.) Bozeman's request for a new trial was denied following sentencing on May 21, 1997. (App. 116.) Bozeman immediately gave notice of appeal. (App. 119.) On May 18, 1998, the Court of Criminal Appeals of Alabama affirmed the judgment by a memorandum opinion that completely ignored prior Alabama case law that interpreted the requirements of the IAD strictly. (Pet. App. 15-26.) The Supreme Court of Alabama reversed the judgment on April 21, 2000. (Pet. App. 1-14.) In so doing, the Supreme Court of Alabama held that "[t]his Court will not interject its interpretation of what the Legislature should have done," noting that "[t]he IAD is not ambiguous" and that "[i]t would require a tortured reading of the statute for us to conclude, as the State suggests, that a brief violation of the IAD can be

ignored." (Pet. App. 8.) The State of Alabama then petitioned this Court for a writ of certiorari which was granted on December 11, 2000. *Alabama v. Bozeman*, 121 S. Ct. 654 (2000).

SUMMARY OF THE ARGUMENT

The language used in the IAD is eminently clear and was properly interpreted by the Supreme Court of Alabama. The mandate of Article IV(e) provides a bright line for what is not permitted (transfer back to the sending State before trial) and the consequences of a violation (dismissal with prejudice). The purposes of the IAD include the efficient disposition of detainers, and when the statute is read as a whole, the Article IV sanctions are clearly an aid to the furtherance of the IAD's purpose.

The rules of statutory construction require Article IV(e) to be given effect as written, and nothing in the legislative history would contradict this. Nor did Bozeman waive his Article IV(e) rights. To the contrary, he vigorously asserted them. The Petitioner and the *Amici* are attempting to amend the statute, but they should more properly address such efforts to the Congress and the State legislatures. The judgment of the Supreme Court of Alabama should be affirmed.

ARGUMENT

I. The IAD Is Not Like Other Interstate Compacts.

Compacts between the States are permitted only with the consent of Congress. U.S. Const., art. I, § 10, cl. 3. Congressional approval of a compact gives it the character of a federal law. *Carchman v. Nash*, 473 U.S. 716, 719 (1985); *Cuyler v. Adams*, 449 U.S. 433, 438 (1981). It is, of course, necessary for the federal government to have the final say in the interpretation of such compacts as water-sharing deals or mutual waste disposal arrangements because an action by one State would have an effect on the other State in the compact.

In such a case, the compact's status as a federal law allows the federal court system to be the arbiter having the final say.

However, the IAD is different from most other compacts.[5] Other States would only be affected if a State chose not to follow the procedures for producing a prisoner.[6] That issue is not before the Court in this case. The decision that a receiving State makes in regard to the sanctions that are included in the IAD affects only that particular State; it does not invalidate sentences or charges in any other State.

Instead of mandating procedures for all States by passing a federal law that would have superceded the IAD, Congress chose to join the IAD as a co-equal member. "It would appear significant that Congress, by enacting P.L. 91-538, subjected itself to the transfer of federal prisoners, including those held for criminal offenses committed in the District of Columbia, to other states which were parties to the Agreement in accordance with its terms." *United States ex rel. Esola v. Groomes*, 520 F.2d 830, 835 n.17 (3d Cir. 1975). The IAD is both federal law and State law, and "[w]e have no more reason to suppose that the Supreme Court of [the State] seeks to undermine the IAD than we have to suppose that it seeks to undermine any other law of [the State]." *Reed v.*

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[5] It must be acknowledged, however, that previous IAD cases in this Court have not fully recognized the difference. *See New York v. Hill*, 528 U.S. 110, 111 (2000); *Reed v. Farley*, 512 U.S. 339, 347 (1994) ("Our precedent, however, has settled that issue: While the IAD is indeed state law, it is a law of the United States as well.") (citing *Carchman v. Nash*, 473 U.S. at 719).

[6] Such an action would be tantamount to a withdrawal from membership in the IAD. In fact, the member States do have the right to withdraw from the IAD although a withdrawal does not affect actions that have already been initiated at the time of the withdrawal. IAD, art. VIII. If a sending State that had not withdrawn refused to abide by the terms of the agreement, the receiving State could presumably bring a contractual action against it to enforce its rights under the IAD.

Farley, 512 U.S. 339, 355 (1994). The IAD allows member States to withdraw from the agreement unilaterally. IAD, art. VIII. Moreover, the IAD presumes that in a particular member State, parts of the IAD could be held to be unconstitutional. IAD, art. IX(1) ("If this agreement shall be held contrary to the Constitution of any state party thereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.").

A. The Decision Of The Alabama Supreme Court In *Ex parte Bozeman* Was Consistent With Alabama Precedent.

Prior Alabama case law dealing with the IAD has always construed the language of the statute strictly.[7] Most of the reported cases deal with Article III questions, and they have held that a prisoner who does not strictly comply with the statutory procedures waives the benefit of the IAD.[8] "[T]here must be strict compliance by the prisoner with the requirements of Article III." *Whitley v. State*, 392 So. 2d 1220, 1224 (Ala. Crim. App. 1980). "'[I]t is incumbent upon the [prisoner] . . . to comply with all the provisions of the act.'" *Turner v. State*, 584 So. 2d 925, 930 (Ala. Crim. App. 1991) (quoting *State v. Calderon*, 661 P.2d 781, 788 (Kan. 1983)). "A prisoner seeking to benefit from the statutory provisions must first meet the burden of compliance with the agreement." *McCallum v. State*, 407 So. 2d 865, 869 (Ala.

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[7] Presumably, the Alabama Legislature thought that the words of the IAD meant what they said when it voted for Alabama to join the IAD as a member State.

[8] This is not unique to Alabama, for in fact, cases from almost all jurisdictions require a prisoner acting under Article III of the IAD to adhere strictly to the technical requirements. *See* Leslie W. Abramson, "The Interstate Agreement of Detainers: Narrowing Its Availability and Applications, 21 *New Eng. J. on Crim. & Civ. Confinement* 1, 18-20 (1995).

Crim. App. 1981). "[O]nce an inmate bypasses the statutory procedure, the burden is on the prisoner to demonstrate strict compliance with the notification and certificate requirements of Sections (a) and (b) of art. III." *Id. See also Haywood v. State*, 501 So. 2d 515, 518 (Ala. Crim. App. 1986); *St. John v. State*, 473 So. 2d 658, 661 (Ala. Crim. App. 1985); *Seymore v. State*, 429 So. 2d 1188, 1194 (Ala. Crim. App. 1983).

However, at the time of Bozeman's transfer in violation of the IAD, there were also two reported Alabama cases that put the same burden of strict compliance on the State in Article IV situations. In *Gillard v. State*, 486 So. 2d 1323 (Ala. Crim. App. 1986), Alabama had obtained temporary custody of the defendant from federal authorities. However, after a brief stay in Bibb County, the defendant was returned to federal custody without having been tried. *Gillard*, 486 So. 2d at 1327. The Court of Criminal Appeals of Alabama held that "[t]he mandatory language and stringent penalties of the Agreement require party states to adhere strictly to the compact's provisions." *Gillard*, 486 So. 2d at 1326. The Court of Criminal Appeals of Alabama also rejected "the Attorney General's request that we remand the case for an evidentiary hearing to determine the reasons why appellant was returned to federal custody prior to trial." *Gillard*, 486 So. 2d at 1327. In effect the court strongly implied that, absent a waiver by the defendant, no reason could excuse the failure to comply with the IAD's anti-shuttling clause. In its decision to reverse the judgment, the court stated:

> Accordingly, we hold that the State violated Article IV(e), by returning appellant to the United States government prior to trial, and that such violation requires dismissal of the indictment with prejudice. The trial court committed reversible error in denying appellant's motion for dismissal.
>
> . . . .

> The judgment of the trial court is reversed and the case remanded with instructions that the conviction and sentence be set aside, and the indictment dismissed with prejudice.

Gillard, 486 So. 2d at 1327-1328.

Similarly, in *State v. Hill*, 638 So. 2d 1376 (Ala. Crim. App. 1993), an Alabama prisoner was transferred to Tennessee but was returned to Alabama without having been tried. An Alabama trial court then refused to extradite the prisoner because the anti-shuttling clause of the IAD had been violated by his return. *Hill*, 638 So. 2d at 1377. The Court of Criminal Appeals of Alabama affirmed because nothing in the record showed that the prisoner had waived his rights under Article IV(e) of the IAD. *Hill*, 638 So. 2d at 1380. In affirming the refusal to extradite, the Court of Criminal Appeals of Alabama noted that

> [t]he Agreement makes it clear that if a prosecuting jurisdiction takes the initiative to bring a prisoner, against whom it has lodged a detainer, from the jurisdiction of incarceration into its temporary custody for disposition of outstanding charges against the prisoner, the requesting jurisdiction must complete the prosecution before returning the prisoner to the jurisdiction of incarceration.

State v. Hill, 638 So. 2d 1376, 1379 (Ala. Cr. App. 1993).[9]

Thus, interpretation of the mandatory language of the IAD was well settled in Alabama at the time that Bozeman was transferred in violation of the IAD, and it should have come as no surprise to the Petitioner or anyone else that the Supreme Court of Alabama held as it did in *Ex parte Bozeman*, No. 1971759 (Ala. Apr. 21, 2000). (Pet. App. 1-14.)

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[9] Implicit in this holding is the fact that the sending State also has a stake in the procedures of the IAD being followed properly.

B. Other States Have Interpreted The IAD In A Similar Manner.

Alabama is not the only State to hold the view that words used in a statute mean what they say.[10] The mandatory language of the statute leaves no room for judicial interpretation of what might or might not interfere with its purpose. In a California case, *People v. Reyes*, 159 Cal. Rptr. 572 (Cal. Ct. App. 1979), Associate Justice Rouse noted that it would be reasonable and appropriate "to permit the defendant to return to her more commodious surroundings at [the federal penitentiary in] Pleasanton where she was undoubtedly involved in rehabilitation programs which are not available at the Contra Costa County Jail." *Reyes*, 159 Cal. Rptr. at 577 (Rouse, J., concurring). Nevertheless, although Rouse clearly did not like the result, he concluded that because Reyes had been transferred prior to trial, dismissal was "mandated by the statute in question and by the cases which interpret that statute." *Id.*

In a Michigan case, the prosecutor argued that the IAD should not require dismissal because "the transfer back was made in furtherance of the IAD's purpose." *People v. Browning*, 306 N.W.2d 326, 337 (Mich. App. 1981). The court's response was short and to the point: "the purpose of the transfer does not matter." *Id.*

New York was among the first group of States to adopt the IAD. In an early IAD case involving official ineptitude, the County Court for Queens County dismissed an indictment with prejudice.

> In any case, respect for the purpose of the agreement requires that the adverse consequences of such oversights as here occurred be visited upon the prosecution

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[10] It is perhaps a sign of our times that the Petitioner and the Amici seem to regard this as a benighted and archaic view.

> and not upon the prisoner. In that way the aim of the agreement is subserved by inspiring the officials concerned to gain knowledge of their duties and to perform them diligently and effectively. They are not likely to be so inspired if the prisoner is made the victim of their contributory inaction. . . . An embarrassment in one case will contribute to better performance in another. But unless *performance* is maintained as the standard of responsibility, a satisfactory appreciation of the measure of responsibility may not develop as soon as it should.

People v. Esposito, 37 Misc. 2d. 386, 394, 201 N.Y.S.2d 83 (Queens County Ct. 1960).

In *People v. Christensen*, 102 Ill. 2d 321, 465 N.E.2d 93 (1984), the Illinois Supreme Court upheld the literal language of the IAD.[11]

> Article IV states unequivocally that if trial is not had before the prisoner is returned, the indictment must be dismissed with prejudice. It is the practice of the court to give statutory language its customary meaning, unless so doing would be inconsistent with the purpose of the statute. Further, criminal statutes are to be strictly construed in favor of the accused. In addition, the agreement is a remedial statute, which must be liberally construed in favor of those whose problems it was meant to address.
>
> The State's argument that the prosecutor's action furthered rather than hindered the purposes of the statute by returning the defendant at the earliest possible time ignores the complexity of the problem which the interstate agreement was designed to resolve.

Christensen, 112 Ill. at 328-329.

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[11] The Appellee in *People v. Christensen* was not related to Bozeman's counsel.

More recently in Texas, capital murder charges were dismissed when a prisoner was returned to a federal penitentiary in Pennsylvania without having been tried. *State v. Sephus*, 32 S.W.3d 369 (Tex. App. 2000). The Court of Appeals of Texas wrote:

> the State urges only that during Sephus' second trip to Texas he waived the 120 day period allowed for trial under Article IV. However, under the literal reading of Article IV(e), which we must apply, the 120 day period for the State to try Sephus never came into play because a trial was already barred. The statute says an "indictment, . . . shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice" when a prisoner is returned to the sending state without being tried on that indictment. Thus, the statute operates, as the trial court concluded, to bar prosecution under the indictment. What occurs thereafter cannot revive a barred indictment. The State's waiver argument is without merit.

Sephus, 32 S.W.3d at 374 (citations omitted).

II. The Plain Language Of The IAD Is Susceptible Of But One Conclusion.

Although Bozeman contends that the Supreme Court of Alabama could properly decide its interpretation of the sanctions contained in the IAD for the State of Alabama, in a larger sense, that issue should be moot because there is but one possible interpretation of the unambiguous language of the statute, one that should apply to all member States.

A. The Canons Of Statutory Construction Demand A Literal Interpretation Of The Mandatory Language Used In The IAD.

"[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must

ordinarily be regarded as conclusive." *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Every word in the statute should be considered to have been intended by the legislature.

> It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times.

Market Company v. Hoffman, 101 U.S. 112, 115-116 (1879).

Article IV(e) of the IAD uses the word "shall" twice: "such indictment . . . *shall* not be of further force or effect, and the court *shall* enter an order dismissing the same with prejudice." IAD, art. IV(e) (emphasis added). "The word 'shall' is ordinarily 'the language of command.'" *Anderson v. Yungkau*, 329 U.S. 481, 485 (1947) (quoting *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935)). If the legislative bodies that adopted the IAD had wished to make the sanction discretionary, they would have used the word "may." *See, e.g., Lopez v. Davis*, 121 S. Ct. 714, 722 (2001) (if the use of "may" in a statute "functions not as a grant of discretion . . . but both as an authorization and command . . . , then Congress' use of the word 'may,' rather than 'shall,' has no significance").

This Court has previously recognized that rules, even procedural rules, need to be interpreted according to their plain language. In *Schiavone v. Fortune*, 477 U.S. 21 (1986), the issue was the interpretation of Federal Rule of Civil Procedure 15(c) which requires a party to have been substituted within the limitations period in order for the amendment substituting the party to relate back to the original

filing. This Court noted that the purpose of the rules is to "'help, not hinder, persons who have a legal right to bring their problems before the courts'" and that "decisions on the merits are not to be avoided on the basis of 'mere technicalities.'" *Schiavone*, 477 U.S. at 27. Nevertheless, this Court recognized the importance of the language of the rule.

> We do not have before us a choice between a "liberal" approach toward Rule 15(c), on the one hand, and a "technical" interpretation of the Rule, on the other hand. The choice, instead, is between recognizing or ignoring what the rule provides in plain language. We accept the Rule as meaning what it says.

Schiavone, 477 U.S. 21, 30 (1986).

Problems will arise when courts allow results to usurp the primacy of the clear language of a statute. "I am reluctant to assume, absent clearer indication, the Court's reliance on a method of statutory construction that allows us to rewrite a statute when the text does not address the specific situation before us or when it does not generate an outcome that we desire." *Henderson v. United States*, 517 U.S. 654, 679 (1996) (Thomas, J., Dissenting).

Justice Scalia has expressed similar concern about using legislative history when the text of a statute is perfectly clear. Commenting on a portion of the Speedy Trial Act, 18 U.S.C. § 3162(a)(2), he stated,

> The text is so unambiguous on these points that it must be assumed that what the Members of the House and the Senators thought they were voting for, and what the President thought he was approving when he signed the bill, was what the text plainly said, rather than what a few Representatives, or even a Committee Report, said it said. . . . This text is eminently clear, and we should leave it at that.

United States v. Taylor, 487 U.S. 326, 345, 108 S. Ct. 2413, 2424 (1988) (Scalia, J., Concurring). With regard to the IAD, it is not only Congress and the President who must be assumed to have understood the plain language of the statute but also forty-eight State legislatures and governors.

B. The Legislative History Of The IAD Does Not Contradict The Plain Language Used In The Statute.

The IAD was proposed by the Council of State Governments in 1956 based on a statement of principles from 1948. Council of State Governments, *Suggested State Legislation Program for 1957* (photo. Reprint 1972) (1956) 3-4, 74-75.

> The legislative history of the Agreement, including the comments of the Council of State Governments and the congressional Reports and debates preceding the adoption of the Agreement on behalf of the District of Columbia and the Federal Government, emphasizes that a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding.

Cuyler v. Adams, 449 U.S. 433, 448-449 (1981).

"The purpose of the Article IV provisions is to insure that interruptions of the sending jurisdiction's incarceration are minimized, and in exchange for the small added hardship placed on the prosecutor of the demanding state regarding time limits, a simplified procedure for obtaining the defendant's presence is made available." *United States ex rel. Esola v. Groomes*, 520 F.2d 830, 834 (3d Cir. 1975).

Moreover, it seems readily apparent that Congress thought that the language of the IAD meant what it said. If that were not so, what purpose was served in amending the federal version of the IAD by appending Section 9 in 1988?

18 U.S.C. App. 2, § 9.[12] By specifically amending the anti-shuffling provisions of Article III and Article IV when applied to the federal government, Congress must have understood the IAD's anti-shuttling language literally. The *Amicus* suggest that in passing Section 9, Congress was "responding to the decisions of the two courts of appeals that had parted company from the rest on this issue." Brief for the United States as *Amicus Curiae* Supporting Petitioner at 18. In fact, a cursory look at the dates of the cases cited shows that the circuits favoring a loose construction were the ones that "parted company" and that most of them did so after the enactment of Section 9.[13]

Even if one were to concede for the purposes of argument that the broad purposes of the IAD somehow support of the positions taken by the Petitioner and the *Amici*, such alleged purposes cannot overcome the clear language of the statute. In reversing the interpretation of the Comprehensive Crime Control Act of 1984 (CCCA) put forward by the United

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[12] The historical note to 18 U.S.C. App. 2, Section 9 states that it was added by Pub. L. 100-690, Title VII, § 7059, Nov. 18, 1988, 102 Stat. 4403.

[13] Petitioner acknowledges that the majority of the federal appeals courts have favored a non-literal reading of the anti-shuttling provisions. Those courts interpret the statute incorrectly, both under the IAD as originally enacted and as applied to the federal government under 18 U.S.C. App. 2, § 9.

Moreover, considerable deference ought to be accorded to the earliest State cases interpreting the IAD literally. Since they were closest in time to the original enactment, they would presumably have a more accurate sense of the statute's original intent. *See, e.g., People v. Esposito*, 37 Misc. 2d 386, 201 N.Y.S.2d 83 (Queens County Ct. 1960); *State v. Chirra*, 79 N.J. Super. 270, 191 A.2d 308 (N.J. Super. Ct. Law Div. 1963); *State v. West*, 79 N.J. Super. 270, 191 A.2d 758 (N.J. Super. Ct. App. Div. 1963); *State v. Mason*, 90 N.J. Super. 464, 218 A.2d 158 (N.J. Super. Ct. App. Div. 1966).

States Court of Appeals for the Second Circuit in *United States v. Rodriguez*, 794 F.2d 24 (2d Cir. 1986), this Court wrote:

> Additionally, and most impermissibly, the Court of Appeals relied on its understanding of the broad purposes of the CCCA, which included decreasing the frequency with which persons on pretrial release commit crimes and diminishing the sentencing discretion of judges. But no legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law. Where, as here, "the language of a provision . . . is sufficiently clear in its context and not at odds with the legislative history . . . '[there is no occasion] to examine the additional considerations of "policy" . . . that may have influenced the lawmakers in their formulation of the statute.'" *Aaron v. SEC*, 446 U.S. 680, 695, 100 S.Ct. 1945, 1954, 64 L.Ed.2d 611 (1980) (quoting *Ernst & Ernst v. Hochefelder*, 425 U.S. 185, 214, n. 33, 96 S.Ct. 1375, 1931, n. 33, 47 L.Ed.2d 668 (1976)).

Rodriguez v. United States, 480 U.S. 522, 525-526, 107 S. Ct. 1391, 1393 (1987).

Respondent respectfully asserts that the IAD is sufficiently clear that no legislative history—and certainly none uncovered by the parties to this matter—can overcome the unambiguous language of Article IV(e).

C. Only By Affirming The Significance Of The Plain Language Of The IAD Can The Purposes Of The IAD Be Achieved.

Article IX of the IAD states that "[t]his agreement shall be liberally construed so as to effectuate its purposes." IAD, art. IX(1). The purposes of the IAD are set forth in Article I:

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of the agreement to encourage the expeditions and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

IAD, art. I. The legislative history of the IAD does not seem to be very extensive, but what history there is seems to confirm that the purposes of the IAD are to reduce the uncertainties that are detrimental to the rehabilitation of prisoners and to provide cooperative procedures that will ensure reduction in these uncertainties.

The Petitioner and the Amici have suggested that liberally construing the IAD so as to effectuate its purposes requires this Court to find that Bozeman actually benefited from his transfer. Such a view stands the statute on its head, presupposing that what the statute seeks to avoid is a good

thing and what it requires in Article IV is a bad thing. Obviously, it also ignores the clear mandate of the IAD. Since one important canon of construction is "that an agreement should be interpreted in such fashion as to preserve, rather than destroy, its validity (*ut res magis valeat quam pereat*)," *Wright v. Universal Maritime Service Corporation*, 525 U.S. 70, 81 (1998), one cannot "liberally construe" in a manner that invalidates large portions of the agreement.

Dismissal with prejudice is the sanction chosen by the IAD for violation of its provisions. Article III(a) and Article IV(c) dictate specific time periods within which a prisoner must be tried. Article V(c) requires dismissal with prejudice if those periods are breached.[14] Article III(d) has an anti-shuttling provision that requires dismissal with prejudice if the prisoner is not tried before being returned to the original place of incarceration. A nearly identical provision, the one at issue in this matter, is contained in Article IV(e).[15] Clearly, this same

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[14] "The adoption of the dismissal sanction of V(c) was not to protect the defendant from being prejudiced . . . but 'was regarded as essential to produce general compliance with the statutory mandate.'" *Nelms v. State*, 532 S.W.2d 923, 927 (Tenn. 1976) (quoting *State v. Lippolis*, 107 N.J. Super. 137, 257 A.2d 705, 710 (1969)).

[15] Bozeman was shuttled within hours of his arraignment; this could not be the intent of Article IV.

> "Article IV(c) permits the retention of temporary custody for as long as four months. There is no discernable reason why a prisoner should languish in the demanding jurisdiction for four months, unless it be to assure his presence for pretrial necessities. One rendition with a maximum duration of 120 days accomplishes this without unnecessary peregrinations. Clearly, unless this be the intent of the Agreement, the 120 days is totally unnecessary."

In re Blake, 99 Cal. App. 3d 1004, 1017-1018, 160 Cal Rptr. 781 (1979) (quoting *United States v. Sorrell*, 413 F. Supp. 138, 141-142 (E.D. Pa. 1976).

sanction could not have been used so frequently without it being specifically intended to be used.

In fact, dismissal with prejudice supports the goals of the IAD. "Because the Detainers Act also states that its goal is to 'encourage the expeditious and orderly disposition of such charges . . . based on untried indictments,' the result in this case cannot be said to be absurd." *State v. Sephus*, 32 S.W.3d 369, 373 n.2 (Tex. App. 2000) (dismissal of capital murder charges because of shuttling). Both shuttling and the denial of a speedy trial inhibit the expeditious and orderly disposition of charges and thus interfere with the rehabilitation of the prisoner. Since imposing a lesser sanction would merely prolong the disruption, dismissal with prejudice is the only appropriate way to minimize the harm done.

Also, the statutory scheme of the IAD recognizes a temporal, legal, and ontological primacy of the conviction in the sending State over the charges in the receiving State.[16] The sending State's conviction occurred earlier than the proceedings in the receiving State.[17] Absent the cooperative procedures of the IAD, the sending State would have no obligation to provide the prisoner to the receiving State.[18]

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[16] The prisoner does not lose the presumption of innocence in the receiving State just because he or she has been convicted of another charge in the sending State. The Petitioner ignores this presumption when arguing that with a strict interpretation of the IAD, "the prisoner can, in effect, get away with murder." Petition for a Writ of Certiorari at 18. At best, a conviction in the sending State remains merely *in potentia* until after judgment is pronounced. That stage would not even be reached if a violation requiring dismissal occurred prior to trial.

[17] This is so regardless of whether the alleged crime in the receiving State occurred before or after the act that is the basis of the conviction in the sending State.

[18] An obvious exception would be when the Supremacy Clause would permit the federal courts to obtain a prisoner pursuant to a writ of *habeas corpus ad prosequendum*.

The IAD recognizes the prior claim of the sending State in several ways. The prisoner is still considered to be an inmate of the sending State. IAD, art. V(g). The receiving State is not allowed to keep the prisoner for an extended period of time. IAD, art. III(a) (180 days from delivery of request); IAD, art. IV(c) (120 days from arrival in the receiving State). While in the temporary custody of the receiving State, the prisoner is required to be housed in a suitable facility so that the sending State does not need to worry about an escape while the prisoner is in the temporary custody of the receiving State. IAD, art. V(d). If the prisoner does escape, it is considered to be an escape from the sending State. IAD, art. V(g). The temporary custody is an accommodation made by the sending State solely for the purpose of permitting prosecution on the charges in the receiving State on which detainers against the prisoner are based. IAD, art. V(d). Because the temporary custody is merely an accommodation, the receiving State is responsible for all costs during the temporary custody.[19] IAD, art. V(h). The prisoner is to be returned to the sending State as soon as possible after the proceedings in the receiving State are concluded. IAD, art. V(e). Dismissal with prejudice is required if the mandatory time periods are violated or if shuttling occurs because such actions interfere with the sending State's interest in the prisoner.[20] *See* IAD, art. III(d), art. IV(e), art. V(c) ("in the event that an action on the indictment . . . is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the

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[19] The shuttling of Bozeman may have been due to this provision of the IAD.

[20] Another way of conceptualizing Article III and Article IV is to think of them as setting forth a definite and an indefinite time period. The definite period is 180 days or 120 days respectively, and the indefinite period is "prior to the return of the prisoner to the original place of imprisonment," IAD, art. III(d), or "prior to the prisoner's being returned to the original place of imprisonment," IAD, art. IV(e).

indictment . . . has been pending shall enter an order dismissing the same with prejudice").

Part of the sending State's interest is in the rehabilitation of the prisoner, and rehabilitation is something that is solely in the domain of the sending State.[21] The court in the receiving State is not in the position to evaluate the rehabilitation that is taking place in the sending State and it cannot positively affect the rehabilitation because it is outside its jurisdiction. The trial court in the receiving State is given jurisdiction only over the things that it is in a position to evaluate: namely, whether the time limits have been complied with (including the tolling of the time under Article VI(a) of the IAD), whether there has been a transfer in derogation of the plain language of the statute, and whether the prisoner has waived any of his rights under the IAD. *See United State ex rel. Esola v. Groomes*, 520 F.2d 830, 842 n.4 (3d Cir. 1975) (Garth, Cir. J., concurring) ("As the remedy provided by the Agreement for acts of noncompliance is dismissal of the indictment 'with prejudice,' it follows that any allegations that the Agreement has been violated are to be presented to and resolved by only the courts of the jurisdiction where the indictment is pending."). When there is a violation in the receiving State, damage is done to the prisoner's certainty as to his future and his program of rehabilitation, but the court of the receiving State cannot do anything to remedy that since it is out of its jurisdiction. Consequently, dismissal with

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[21] In *United States ex rel. Esola v. Groomes*, 520 F.2d 830, 835 (3dd Cir. 1975), the rights of the sending State were noted along with the rights of the prisoner.

> Thus, while Esola's rights to a speedy trial and effective rehabilitative treatment were allegedly violated by the multiple transfers, the rights of the United States were also violated by the same transfers. The Federal Government, through joinder in the Agreement, forfeited its right to exclusive control over Esola during the term of the sentence imposed by the district court.

prejudice stands not as an arbitrarily harsh sanction but as the only practical choice to minimize the damage that has been done. Dismissal with prejudice, with a return of the prisoner to the jurisdiction where he is an inmate, is thus consonant with the purposes of the IAD. In sum, construing the purposes liberally means to give *effect* to this sanction in the circumstances in which the IAD calls for it. "The remedial nature of this legislation requires that it should be construed liberally in favor of those it was intended to benefit." *Nelms v. State* 532 S.W.2d 923, 927 (Tenn. 1976) (citing *Commonwealth v. Fisher*, 451 Pa. 102, 301 A.2d 605 (1973)). "The legislation adopting the agreement is obviously remedial in character and, thus, by familiar principle should be construed liberally in favor of the prisoner." *State v. West*, 79 N.J. Super. 379, 384, 191 A.2d 758 (N.J. Super. Ct. App. Div. 1963).

Like the Petitioner and the *Amici*, the trial court did not like the results of a literal interpretation of the IAD.[22] The trial court thus reached several conclusions that were not based on any evidence whatsoever.[23] The trial court found that bringing Bozeman to Alabama briefly for arraignment and then "return[ing] him to the surroundings to which he was accustomed . . . appears to have been conservative of *defendant's* interest in maintaining any course of

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[22]The trial court obviously went to great lengths to avoid giving effect to the literal language of the IAD. The trial concluded on February 28, 1997. (App. 48.) The hearing on the IAD issue was held on March 12, 1997. (App. 53.) The motion to dismiss was not denied until May 16, 1997. (Pet. App. 27.) On April 25, 1997, Bozeman had filed a motion objecting that Article V(e) of the IAD was being violated by failing to return him to the sending State in a timely manner after the conclusion of proceedings in the receiving State. (App. 109-110.)

[23]Despite the urging of the District Attorney (App. 79-82), the trial court did not make any finding of waiver, and of course, there was no evidence of waiver. The evidence did clearly show that there was a violation of the anti-shuttling clause of the IAD. (App. 53-108.)

rehabilitation available to him in federal prison." (Pet. App. 28.) The trial court expressed concern that "it is often difficult to acquire [a federal prisoner] indefinitely without encountering substantial reluctance from federal authorities." (Pet. App. 28.) The trial court also stated that "many prison inmates don't care to stay in our county jail for two or three months pending trial." (Pet. App. 28.) Finally, the trial court asserted that "[t]he transfers involved in this case appear to be wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government." (Pet. App. 28-29.)

First, the trial court ignored the clear language of the statute. Second, the reasons that it gave were patronizing, presumptuous, and probably wrong. Per the discussion above, just as a court in the receiving State cannot order rehabilitation in a sending State because it is not in that court's jurisdiction, so too the court in the receiving State has no way of knowing whether a transfer "is conservative of *defendant's* interest in maintaining any course of rehabilitation available to him." Third, the trial court's concern about the reluctance of federal authorities was unfounded. Upon the proper request by the District Attorney, the federal authorities were *required* to comply by making Bozeman available for trial in Alabama. IAD, art. IV(a) ("appropriate officer . . . shall be entitled to have a prisoner . . . made available"). *See also People v. Lincoln*, 42 Colo. App. 512, 515-516, 601 P.2d 641 (1979) ("the Agreement does not accord the prison official discretion to comply or not to comply with its terms"). Similar concerns were raised in *United States ex rel. Esola v. Groomes*, 520 F.2d 830 (3d Cir. 1975).

> Finally, the state asserts that the federal authorities at Danbury might have been reluctant to agree to the extended temporary custody which is involved in this

> case. The answer to this question is that had a proper Article IV(a) request for temporary custody been made, absent intervention by the executive, Article V(a) would have entitled New Jersey to such custody. The potential reluctance of the Danbury authorities is no bar to the imposition of Article IV(e) sanctions.

United States ex rel. Esola v. Groomes, 520 F.2d 830, 839 n.28 (3d Cir. 1975).

Fourth, the trial court's general finding that "many prison inmates don't care to stay in our county jail" was purely speculative as applied to Bozeman.[24] No one asked Bozeman where he wanted to be housed. *Cf.* 18 U.S.C. App. 2 § 9(2) (allowing a court to return a prisoner only after notice and the opportunity for a hearing). Furthermore, the IAD requires the receiving State to house the prisoner, IAD, art. V(d), and pay the associated costs, IAD, art. V(h). In fact, the IAD presumes that a prisoner may have to stay in a county jail for up to four months, whether the prisoner cares to or not.[25] IAD, art. IV(c).

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[24] Incidentally, the Covington County Jail was relatively new at the time of these events; even if the trial court's presumption might have been true regarding most prisoners and the old jail, it is far less certain regarding the new jail.

[25] The time could even be extended beyond that time by a continuance granted "for good cause shown in open court, the prisoner or his counsel being present." IAD, art. IV(c). The plain language here indicates that the continuance could be granted over the prisoner's objection as long as there is "good cause shown in open court." In other words, there is a possible exception to the definite time limit. It should be noted that there is no parallel construction for the anti-shuttling clause; no possible exception is given. IAD, art. IV(e). Although a prisoner can waive his right not to be shuttled, a prisoner cannot be compelled to be shuttled without the State incurring the mandatory sanction of dismissal with prejudice. *Cf.* 18 U.S.C. App. 2 § 9(2) (allowing an exception for the federal government where there would be an opportunity for the prisoner to object but which the court can presumably overrule).

Finally, it was completely speculative for the trial court to conclude that the transfer of Bozeman was "wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government." (App. 29.) There was no evidence presented from which the trial court could have made such a finding. The trial court did not know whether Bozeman was involved in any rehabilitative programs. The assumption that a relatively short stay in the receiving State would allow the prisoner to pick up where he left off in the sending State is perhaps understandable, but inaccurate.[26] Besides losing a place in any programs that a prisoner might have been involved in at the time of his removal, it is extremely unlikely that a prison would allow a prisoner to fill a space in a rehabilitative class when the prison is aware that the prisoner is going to be removed again at some time in the near future. In fact, the mere fact that there is a detainer may make an inmate ineligible for rehabilitative treatment. A prisoner who has a detainer filed against him "often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps." *Suggested State Legislation Program for 1957* at 74. *See also Nash v. Jeffes*, 739 F.2d 878, 882-883 (3d Cir. 1984) (listing ten consequences of prisoners who have detainers outstanding from *Cooper v. Lockhart*, 489 F.2d 308, 314 n.10 (8th Cir. 1973)). In Bozeman's case, the transfer had the added detriment of preventing him from meeting with his lawyer to prepare for trial. (App. 111-112.) His transfer was not in furtherance of the goal of the IAD.

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[26] *See, e.g.*, U.S. Department of Justice, Federal Bureau of Prisons, *Receiving and Discharge Manual* (1997) (detailing the elaborate procedures that must be followed in searching and keeping an inmate isolated from the general population both before and after transfer to another jurisdiction) (available on the internet at www.bop.gov).

III. Harmless Error Does Not Apply To The IAD.

The Petitioner has attempted to adopt the unfounded statements of the trial court by claiming that Bozeman was not harmed by his transfer and that the requirements of the statute should therefore be ignored. A similar situation occurred in *Hughes v. Dist. Ct.*, 197 Colo. 396, 398, 593 P.2d 702 (1979), where the prisoner had been brought to the Denver District Court on October 19, 1977 and trial dates were set for January of 1978. He was then transported to the federal penitentiary in Leavenworth, Kansas on October 22, 1977. *Id.* The State claimed "that the rehabilitative purposes of the Interstate Agreement on Detainers, as expressed in Article I, would have been subverted had the [prisoner] not been sent to Leavenworth pending trial." *Id.* at 401. The Colorado Supreme Court responded, "We do not agree." *Id.* (noting that nothing in the record indicated a request for a transfer by the prisoner). The Petitioner's attempt to shift the issue in the present case should be similarly resisted. "[T]he incidence of absence of prejudice to defendant . . . is quite irrelevant to the scheme and objectives of the act." *State v. Lippolis*, 107 N.J. Super. 137, 144, 257 A.2d 705 (N.J. Super. Ct. App. Div. 1969).

A. Unlike The Other Situations Cited In Petitioner's Harmless Error Argument, The Sanction For Violation Of The IAD Is Included In The Clear Language Of The Statute.

The Petitioner suggests applying a harmless error rule to the IAD, but none of the cases cited by the Petitioner deals with a statute that contains a mandated sanction of dismissal as the IAD does in several instances.[27] Also, there is a discernable pattern readily apparent in the cases cited by the

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[27] *See* Respondent's Brief in Opposition at 11-14.

Petitioner: harmless error analysis is applied to errors that take place *in court proceedings*, usually at the trial. Questions of harmless error hinge upon whether the error had any substantial influence on the outcome of the proceedings.

In the present case, however, the error was not made during court proceedings, and, indeed, never would be for a violation pertaining to Article III or Article IV. In fact, if the trial court had adhered to the plain language of the statute, Bozeman would not have even been tried in Alabama. Therefore, one cannot accept the cavalier assertion of the Petitioner that this case concerns "a mere technical, procedural violation not resulting in any harm to Bozeman." Brief for Petitioner at 34. It is impossible to imagine how the enormous difference between an indictment being dismissed and not being dismissed could ever be characterized as "harmless."

B. The Petitioner Attempts To Reverse The Burden Of Proof.

"The burden of compliance with the procedural requirements of the IAD rests upon the party states and their agents; the prisoner, who is to benefit by this statute, is not to be held accountable for official administrative errors which deprive him of that benefit." *Pittman v. State*, 301 A.2d 509, 514 (Del. 1973). It is curious that although it was the District Attorney was the one who caused the violation of Article IV(e), the Petitioner attempts to place the burden of showing that the error was not harmless upon the Respondent.

Bozeman maintains that a harmless error analysis is not proper for the IAD,[28] but for the sake of argument, if a

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[28]In *Commonwealth v. Fisher*, 451 Pa. 102, 106, 301 A.2d 605 (1973), the Pennsylvania Supreme Court criticized another court because it had "freighted the statute with considerations of prejudice and the lack thereof, emanations which we fail to perceive and accordingly refuse to adopt."

harmless error analysis were permitted, it should be the burden of the receiving State to prove that an error was harmless once the prisoner has made a *prima facie* showing that there was a violation. Compare, for example Rule 56 of the Federal Rules of Civil Procedure, in which the moving party has "an initial burden of proof, which shifts to the nonmoving party if satisfied by the moving party." *Celotex Corporation v. Catrett*, 477 U.S. 317, 330 (1986) (Brennan, J., dissenting). Bozeman proved that there was a transfer in violation of Article IV(e); there is no dispute about this fact. At that point, if there were to be a harmless error analysis, the burden would have shifted to the prosecution, but in fact, the prosecution put on no evidence. *See United States v. Olano*, 507 U.S. 725, 734 (1993) (discussing Federal Rule of Criminal Procedure 52(a) where the defendant has objected and the burden is on the government to prove harmless error and Rule 52(b) where the burden shifts to the defendant to prove that he was prejudiced by a forfeited plain error).

C. Imposition Of A Purported Harmless Error Rule As Proposed By the Petitioner Would Vitiate The Unambiguous Language Of The IAD.

There is, of course, no constitutional or common law right not to be shuttled; the right is purely statutory. As such, the only matter to be considered is strictly the language of the statute.[29] As a practical matter, if the IAD is not strictly

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[29] It is ironic that the Petitioner evidently has a flexible standard for when the language of a statute ought to be construed strictly. In another context in dealing with another purely statutory right, the Petitioner has approvingly quoted the United States Court of Appeals for the Eleventh Circuit:

> [E]lection contests exist only by virtue of statutory enactment and such statutes are to be strictly construed. . . . ". . . An election contest being purely statutory, the courts are limited in their investigation to such subjects as are specified in the statutes. The

construed, the sanctions contained within it are meaningless. Neither the Petitioner nor the *Amici* have cited any cases where the sanction of dismissal was imposed by a jurisdiction that did not interpret the statute literally, and if such cases exist, Respondent has not been able to find them. In short, the Petitioner would like this Court to adopt a harmless error standard for the IAD because the Petitioner knows that if that happens, it no longer will need to conform its actions to the statute. The deterrent effect of the possibility of dismissal with prejudice will no longer exist. By the Petitioner's view, "this law has wax teeth and is little more than a legislative exercise in futility." *People v. Esposito*, 37 Misc. 2d 386, 391, 201 N.Y.S.2d 83 (Queens County Ct. 1960).

IV. The "Bright Line" Set Forth In The Statute Is Preferable To A Balancing Test.

The IAD is remarkable for its clarity. If a prisoner is not tried within the applicable time periods, the indictment must be dismissed with prejudice. IAD, art. V(c). If the prisoner is returned to the sending State before being tried, the indictment must be dismissed with prejudice. IAD, art. III(d) & art. IV(e). The clear mandates of the IAD provide a bright line test that provides certainty for all parties involved. A balancing test such as the *Amicus* proposes would lead inevitably to uncertainty and the waste of judicial resources.

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remedy is not to be extended to include cases not within the language of the statute; and the right of contest is not to be inferred from doubtful provisions."

Brief for the State of Alabama, the Attorney General of Alabama, and the Secretary of State of Alabama as *Amici Curiae*, supporting Reversal in Case No. 00-836, *George W. Bush v. Palm Beach County Canvassing Board*, at pages 26-27 (quoting *Roe v. Alabama*, 43 F.3d 574 (11th Cir. 1995) (quoting *Longshore v. City of Homewood*, 171 So. 2d 453, 455 (1965)).

A. The Balancing Test Requested By The *Amicus* Is A Chimera.

Although the Amicus encourages the Court to follow the circuit courts of appeal that "have chose to examine the particulary circumstances in light of the purpose of the law," Brief of the National Association of Extradition Officials at 9, the Amicus notes that "[u]nfortunately, none of the courts employing this approach has articulated any test by which each case can be judged. As a result, these decisions offer little predictive value." *Id.* at 10. In fact, the cases offer great predictive value, for as the *Amicus* has stated, those circuits "have consistently held no dismissal is warranted." *Id.* at 9-10. The only balancing that has taken place in these circuits looks more like contortions done by the courts to avoid dismissing the charges. "If the trial court has the power, it will in practice be loath to deny almost any application for validation of a prosecutor's lapse, and the policy of the statute will suffer inevitable erosion." *State v. Lippolis*, 107 N.J. Super. 137, 144, 257 A.2d 705 (N.J. Super. Ct. App. Div. 1969).

B. No Balancing Test Could Be Imposed Upon The IAD Without Doing Violence To The Clear And Unambiguous Language Of The Statute.

As discussed at some length above, the IAD forms a coherent whole. The clear language mandating dismissal with prejudice for certain violations of the statutory requirements fits logically with the entire statutory scheme. The *Amicus* urges an interpretation of the IAD that is in keeping with what it says is the spirit of the IAD, yet that spirit seems to be directly at odds with the unambiguous language of the statute.

> Before discussing this argument, it may not be improper to premise, that, although the spirit of an instrument,

> especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme, to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent, unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words, is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application. This is certainly not such a case.

Sturgis v. Crowninshield, 17 U.S. 122, 202-203 (1819). Of course, the *Amicus* premises its argument on the conclusion that the "harsh remedy of dismissal" is a ridiculous result that could not possibly have been intended. The fact that Congress and forty-eight State legislatures said differently in passing the IAD indicates that dismissal is not a result that all mankind would unite in rejecting.

C. The Bright Line Test Already Contained In The Statute Conserves Judicial Resources And Protects The Interests Of All Parties Intended To Benefit From The IAD.

The Delaware Supreme Court has held that the IAD must be construed "in favor of the prisoner because the State, through its agents and its control of the procedural aspects of the IAD, controls the only ultimate guarantee of performance

for the benefit of the prisoner." *Pittman v. State*, 301 A.2d 509, 513 (Del. 1973). The "performance" standard must be to follow the clear language of the statute, including the bright line test for when dismissal with prejudice is mandated. Anything less would require extensive judicial inquiry into matters outside the jurisdiction and competence of the court of the receiving State and would inevitably produce protracted litigation and appeals. In contrast, the bright line contained in the statute makes the inquiry simple for the court of the receiving State: Has there been a transfer back to the sending State before trial? If so, has there been a waiver? If not, then the case must be dismissed. This simple statutory scheme produces efficient results and protects the interests of both the prisoner and the sending State.

The proposal that some violations can be ignored or balanced against some larger concerns because they cause no prejudice to the prisoner is foreign to the structure and purposes of the IAD, besides being purely speculative. The Colorado Supreme Court has noted:

> There is no requirement in the Interstate Agreement on Detainers that a prisoner demonstrate that prejudice resulted from a violation of its provisions. It does not appear that such a requirement would further the purposes of the Agreement as spelled out in Article I, and we decline to adopt such a construction of the Agreement.

Hughes v. Dist. Ct., 197 Colo. 396, 402, 593 P.2d 702 (1979). Obviously, if Congress and the State legislatures had wished there to be a requirement that a prisoner show prejudice, it could have included language to that effect in the IAD. Wisely, it did not do so. Such a requirement would have required the courts to find facts on circumstances outside its jurisdiction and thus outside its control. The bright line contained in the statute is much to be preferred. As stated in dissent by Justice Hall of the Georgia Supreme Court:

> I believe that when multiple jurisdictions agree with one another through a uniform act for equivalent, reciprocal, and orderly treatment of prisoners desired by them both, it is contemplated that the Act will be enforced according to its plain terms to achieve simplicity and certainty. Both simplicity and certainty will be lost forever under the majority opinion. That opinion necessarily means that when a prisoner's rights under the Act have been violated, and when he has in no fashion waived them, nonetheless the state will be accorded a full judicial hearing at which time it may introduce evidence that its violation of the act did no harm to the prisoner's rehabilitative opportunities in the original place of imprisonment, and therefore the prisoner's remedies under the Act should not apply. This interpretation makes the Act a great spawner of trivial litigation over attempted proof of an intangible (what is a significant interference with a rehabilitative process?) And I cannot agree that this accords with the true purposes of the Act.

State v. Sassoon, 242 S.E.2d 121, 124 (Ga. 1978) (Hall, J., dissenting).

V. The Respondent Made No Waiver Of His Rights Under The IAD And The *Amicus*' Attempt To Find Waiver Fails.

Waiver of the statutory rights accorded by the IAD is permissible. *New York v. Hill*, 528 U.S. 110, 120 S. Ct. 659 (2000). However, Bozeman made no waiver; the record is quite clear about this.[30] "[C]ourts indulge every reasonable

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[30] The District Attorney first made the allegation of waiver in an off-the-record discussion in the judge's chambers in which she cited a number of Alabama cases dealing exclusively with Article III of the IAD. She reiterated this position following the trial. (App. 49.) Nevertheless, neither the District Attorney nor anyone else since that time has been able

presumption against waiver." *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393, 57 S. Ct. 809, 812 (1937) (whether parties in a civil action waived their right to a jury trial by both submitting requests for a directed verdict). "Waiver is the 'intentional relinquishment or abandonment of a known right.'" *United States v. Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Of course, certain statutory rights such as those afforded by the IAD can be waived without full knowledge of the rights by requesting treatment contrary to the rights. *Webb v. Keohane*, 804 F.2d 413, 415 (7th Cir. 1986). That is not at issue here because Bozeman was aware of at least some of his IAD rights as shown by his *pro se* motion. (App. 18-20.) However, there is nothing in the record that indicates waiver. "Presuming waiver from a silent record is impermissible." *Carnley v. Cochran*, 369 U.S. 506, 516 (1962). This is also true when the right is statutory. *Wright v. Universal Maritime Service Corporation*, 525 U.S. 70, 80 (1998) ("a waiver must be clear and unmistakable").

Unlike *New York v. Hill*, 528 U.S. 110, 118 (2000), in which the defendant had agreed to a trial date outside the statutory period and then tried to make "a distinction between waiver proposed and waiver agreed to," Bozeman neither proposed his transfer nor agreed to it. In short, he made no waiver of his rights under Article IV(e). "Where the transfer back is not done at the request of defendant or his attorney, we believe that the state should be charged with the

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to point to any place in the record where a waiver occurred. The conclusions of the *Amicus* that "those involved understood that Bozeman was to be returned to Florida after the arraignment," Brief of the National Association of Extradition Officials as *Amicus Curiae* in Support of the State of Alabama at 18, are baseless and are discussed *supra* at note 2. The other *Amicus* also seems to assume that all parties knew of the impending transfer by suggesting that Bozeman should have objected. Brief of the United States as *Amicus Curiae* Supporting Petitioner at 6.

responsibility therefor. In no other way can the defendant's right to final disposition before return be adequately safeguarded." *People v. Browning*, 306 N.W. 2d 326, 335 (Mich. App.1981).

VI. Imposition Of A "*De minimis*" Rule Upon The IAD As Proposed By The *Amicus* Would Ignore The Clear Directive Of The Legislative Bodies That Have Adopted The IAD.

The *Amicus* suggests that this Court impose a "*de minimis*" analysis upon the IAD. First, it is unclear what interest the United States has in supporting the Petitioner in this matter. Bozeman's Federal sentence was not voided by the decision of the Alabama Supreme Court. Only the Alabama charges were affected. In fact, if the situation had been reversed and the United States had been the receiving State and had transferred Bozeman back to Alabama before trying him, the dismissal could have been with or without prejudice. 18 U.S. C. App. 2, § 9(1).[31] Be that as it may, since the United States has chosen to support the Petitioner, it has put forward a *de*

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[31] This would still be a violation of the IAD and dismissal would be mandated. However, the trial court is given some discretion regarding the severity of the sanction (with or without prejudice) when the United States is the receiving State. The *Amicus* is simply wrong in suggesting that 18 U.S.C. App. 2, § 9(2) "essentially codifies the position taken by the majority of federal courts of appeals" that do not find violations of the IAD when a prisoner is returned to the sending State prior to trial. Brief of the United States as *Amicus Curiae* Supporting Petitioner at 18. The interpretations of these courts would also seem to excuse compliance with the federal amendment. Section 9(2) requires that the transfer be done "pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing." 18 U.S.C. App. 2, § 9(2). Bozeman was not transferred pursuant to a court order, neither he nor his attorney was given notice, nor was a hearing on the transfer held before it occurred.

minimis interpretation in an attempt to shift the blame and the focus of what actually happened.[32]

The legislatures that have adopted the IAD were concerned about abuses by prosecutors, and they did not put in language that would excuse allegedly minor violations. The language of the IAD does not even make exceptions for inadvertent error. In Bozeman's case, what occurred was the direct result of deliberate action on the part of the prosecutor. The District Attorney never had any intention to abide by the terms of the IAD regarding a single transfer for trial.[33] Whether this was due to insurmountable ignorance or simple contumaciousness is unclear, but in neither case should the behavior be rewarded by considering it to be *de minimis*, especially since doing so would be in direct derogation of the language of the statute.[34] "Judges and prosecutors are players who can be

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[32] The *Amicus*' *de minimis* argument does not differ substantially from the Petitioner's harmless error argument. *See* Brief for the United States as Amicus Curiae Supporting Petitioner at 11 ("the similar and universally accepted principle of criminal procedure that harmless errors—errors that do not affect substantial rights—cannot be noticed"). *Cf.* Rule 37.1, Rules of the Supreme Court of the United States.

[33] The District Attorney always intended to shuttle Bozeman back to the federal penitentiary. Her letter of January 8, 1997 stated that "[a]n agent of the Covington County Sheriff's Department will pick Mr. Bozeman up on January 15, 1997 and return him to your facility on January 16, 1997. (App. 99.) The Prosecutor's Acceptance of Temporary Custody form also stated, "Inmate will be picked up from facility on January 15, 1997 and returned on January 16, 1997." (App. 104.) In fact, the pick-up and return occurred on January 23 and 24, 1997. (App. 86-87.)

[34] In *People v. Esposito*, 37 Misc. 386, 201 N.Y.S.2d 83 (1960), an inmate's request under Article III of the IAD had not been properly forwarded by the inmate's warden in the sending state. The district attorney contended that the omissions of the warden should not be held against the receiving State. The County Court for Queens County responded, "If that contention be correct the prisoner's effort to invoke the interstate procedure can be defeated by ineptitude—or worse—at least to

expected to know the IAD's straightforward requirements." *Reed v. Farley*, 512 U.S. 339, 370 (1994) (Blackmun, J., dissenting). The District Attorney had ample opportunity to investigate the IAD. A cursory reading of the statute would have warned her that she should not plan to transfer Bozeman back to federal custody before trial. *See* IAD, art. III(d), art. IV(e) & art. V(c). The State of Alabama had the obligation to inform the District Attorney of the provisions of the IAD. IAD, art. VII ("Each state party to this agreement shall designate an officer who . . . shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement."). The District Attorney was also statutorily charged with the duty of enforcing the IAD. IAD, art. IX(3) ("All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes."). Moreover, the IAD is referred to in the forms that the District Attorney had to fill out to obtain custody of Bozeman. Bozeman's newly appointed counsel put her on notice of the IAD at the arraignment. (App. 27 ("it appears that there may be some question about whether the Interstate Agreement on Detainers was properly followed . . . .").) Finally, the District Attorney had notice from Bozeman himself (through his *pro se* motion) that a violation of the IAD mandated dismissal.[35]

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the extent that final disposition of the outstanding charges can be postponed indefinitely, by official confusion compounded." *Esposito*, 37 Misc. at 391.

[35] The District Attorney acknowledged receipt of the *pro se* motion in her testimony at the hearing on the motion to dismiss.

> But in January of 1997, which would have been after his indictment in 97-16, and before he was brought back on the 23rd, we did receive, which apparently was after he was notified that we had

(App. 18-20.) As if that were not enough, the only two reported Alabama cases at the time that dealt with the anti-shuttling clause of the IAD had both supported a strict construction of the language of the statute. *See State v. Hill*, 638 So. 2d 1376 (Ala. Crim. App. 1993); *Gillard v. State*, 486 So. 2d 1323 (Ala. Crim. App. 1986). In sum, there was no excuse for violating the IAD, and such a deliberate violation is surely not *de minimis*.

A. A "*De minimis*" Interpretation Would Cloud The Bright Line Established By The Clear Language Of The Statute.

Under the analysis put forward by the *Amicus*, no statute could ever be more specific than a constitutional right. To give but one example, the violation of a speedy trial statute that had a clear and unambiguous deadline for a trial after which a charge must be dismissed would not be considered under the statutory time period but rather would be subjected to the analysis of *Barker v. Wingo*, 407 U.S. 514 (1972), to see if the Sixth Amendment had been violated.[36] Our system

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> placed a detainer on him, we received a paper from Mr. Bozeman asking that everything be dismissed. That we had violated the Interstate Agreement on Detainers, which appeared to be a request to [dispose] of everything.

(App. 69.)

[36] This Court noted that statutory requirements can be more specific than constitutional requirements.

> We do not establish procedural rules for the States, except when mandated by the Constitution. We find no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months. The States, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach must be less precise.

Barker v. Wingo, 407 U.S. 514, 523 (1972). Of course, State constitutional requirements can also be more stringent than federal constitutional requirements; the federal Constitution merely provides a

simply does not work that way. Constitutional constraints provide a framework that statutes may not violate, but the legislatures (both Congress and the various State legislatures) are free to create statutory rights where the Constitution is silent, and they are free to create these rights with great specificity.

The clear language of the IAD sets a bright line for what is and what is not permissible, and the IAD is unambiguous in mandating the sanction to be imposed for violation of the bright line. A *de minimis* rule would obscure the clarity of the statute. Bozeman contests the characterization of what happened to him as being *de minimis*. Disputes involving lengthy hearings would be the inevitable result of any attempt to back off from the bright line. The real reason that the *Amicus* wishes to have a *de minimis* rule adopted is that it does not want those whom it regards as criminals to have their charges dismissed.[37] Nevertheless, such a concern does not justify ignoring the clear mandate of the law, especially when the sanction is imposed because the State violated the law. "The criminal goes free, if he must, but it is the law that set him free. Nothing can destroy a government more quickly than its failure to observe its own laws." *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

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floor below which the States may not fall. *See e.g.*, *State v. Harberts*, 331 Or. 72, 11 P.3d 641 (2000) (vacating death sentence and remanding with instructions to dismiss with prejudice on State constitutional grounds and noting that not all of the *Barker v. Wingo* factors apply to the State constitution's guarantee of a speedy trial).

[37] As pointed out earlier, this view ignores the presumption of innocence enjoyed by the accused.

B. Adopting A "*De minimis*" Rule Would Ignore The Fact That The Harm To The Prisoner Has Already Been Done When The Shuttling Occurs.

Dismissal is an appropriate remedy for violation of the anti-shuttling provisions of the IAD because the harm (at the very least, anxiety, uncertainty, and disruption) has already occurred. The court of the receiving State is not in a position to be able to repair that damage, not only because the damage is already done but also because the remedy is outside of the court's jurisdiction. The court cannot order the sending State to do something to "make up for" the violation. Rather, all that the court of the receiving State can do is recognize that harm has occurred and minimize it by dismissing the charges so that the prisoner can be returned to the sending State.[38] The Petitioner and the *Amici* seem to overlook the fact that "the damage is done by the filing of the detainer, and the problem is not solved until there is a final disposition." *People v. Christensen*, 102 Ill. 2d 321, 328, 465 N.E.2d 93 (1984). Final disposition can obviously—and appropriately, when there has been a violation—be achieved through dismissal of charges. Therefore, adopting a *de minimis* rule would ignore the damage that is inherent in a transfer in violation of the IAD.

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[38] It should not be overlooked that the dismissal required by Article IV(e) is but the logical conclusion of the earlier mandate that the indictment shall be void which precludes further prosecution.

> It is a well settled rule that a formal accusation is an essential condition precedent to a valid prosecution for a criminal offense. If Article IV(e) is violated and the indictment therefore loses its "force and effect," the condition precedent is unsatisfied and the prosecution is technically precluded from proceeding further. The sanction of dismissal with prejudice contained in Article IV(e), then, is a relatively severe sanction designed to compel prosecutorial compliance with the procedures set forth in the IAD.

Camp v. United States, 587 F.2d 397, 399 n.4 (8th Cir. 1978).

VII. The Petitioner And The *Amici* Simply Do Not Like The Result In The Present Case, But They Offer No Convincing Arguments That Should Cause This Court To Ignore The Unequivocal Language Of The Statute.

The Petitioner and the *Amici* object to the results of a literal interpretation of the IAD because it sometimes allows someone who has been charged to go free. They hope that the possibility of freeing a prisoner will be so shocking to the Court that it will adopt any of their arguments—it matters not which one as long as prosecutors do not have to worry about following the law. They urge judicial approval of a *de facto* amendment that would remove the mandatory sanctions of Article IV(e). *See Fex v. Michigan*, 507 U.S. 43, 52 (1993) ("Petitioner's 'fairness" and 'higher purpose' arguments are, in other words, more appropriately addressed by the legislatures of the contracting States, which adopted the IAD's text.").

The Petitioner and the *Amici* ignore the plain language of the statute, and they ignore the fact that it was entirely within the power of the District Attorney to have avoided the result mandated by the IAD *simply by following the rules*. The rules are set forth unambiguously in the IAD, and the clarity and specificity that are found in the statute can be relied upon by any court of law. "[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and time again that the courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-254 (1992). *See also Tennessee Valley Authority v. Hill*, 437 U.S. 153, 194-195 (1978) ("We do not sit as a committee of review, nor are we vested with the power of veto."); *Caminetti v. United States*, 242 U.S. 470, 485 (1917) ("if the law is within the constitutional authority of the lawmaking body which passed it, the sole function of the courts is to enforce it according to its terms").

The Supreme Court of Alabama correctly determined that the plain language of the IAD should be given the effect intended by the legislative bodies that passed it. The IAD can *only* be given effect by enforcing the plain language that was used in the statute. Michael Herman Bozeman and persons like him were the intended beneficiaries of the IAD, and so are we all. If a statute that is this clearly written can be ignored, what will be next?

CONCLUSION

The mandatory language of the Interstate Agreement on Detainers is set forth clearly and unambiguously, leaving no room for judicial discretion. The judgment of the Supreme Court of Alabama should be affirmed and all attempts to amend the statute should be addressed to the legislative branches of the respective member States.

Respectfully submitted,

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